

EXHIBIT B

1 Q. Okay. So the Walmart Global Statement of Ethics, the
 2 Walmart Minimum Requirements for Suppliers, and the
 3 Walmart Requirements for Suppliers was all pulled
 specifically for this case?

4 A. Yes.

5 Q. And obviously you were provided the deposition
 6 testimony of Joe Bussell from the Locke case from 2014
 7 and 2015.

8 These notes that you've pulled from those
 9 depositions, is that a summary of what you felt was
 10 important from those depositions?

11 A. Yes.

12 Q. Were you provided with the deposition of Tracy
 13 Lieberman?

14 A. Not that I recall.

15 Q. So you were just provided with depositions of Joe
 16 Bussell, both from the Locke case and from the
 17 Blankenship case, as well as Cara Rose and Jorge
 18 Garcia.

19 Do you know if you had read Mr. Garcia's
 20 prior testimony in the Locke case?

21 A. I have not.

22 Q. You just read his testimony in this case?

23 A. Yes.

24 Q. To the extent in your chronology of events, would it

1 data, they asked for a full report. Now, asking for a
 2 full report is not asking for a recall. If you look
 3 at 16 CFR 1115, I believe it's .7, it lists out the
 4 information the commission requests as part of a full
 5 report.

6 A full report is something that a
 7 manufacturer, distributor or retailer is required to
 8 provide to the commission after making an initial
 9 report that their product, they have information that
 10 reasonably leads to the conclusion that their product
 11 contains a defect that could create a substantial
 12 product hazard, or in another section, an unreasonable
 13 risk of injury.

14 So the commission said, we have some
 15 information and we cannot be fully informed until you
 16 file a full report, which includes a listing of all
 17 the injuries. It includes how it was discovered, when
 18 it was discovered, and things like that. I probably
 19 do have the exact language in the pile.

20 Q. Well, let me back up then. Do you recall what the
 21 date of the recall was for the GE food processor?

22 A. The date of the press release was May 25th, 2011. Let
 23 me just double-check that for you.

24 Q. Was that also the date of the 15(b) Report Walmart
 25 provided to the CPSC?

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1 be fair to say that you're paraphrasing some of the
 2 e-mails or are you actually direct quoting some of the
 3 e-mails?

4 A. It's not a direct quote, but I try to use as many of
 5 their words as I could, you know, so I didn't have to
 6 write out the whole e-mail.

7 Q. Is there a way to determine what is paraphrasing
 8 versus a direct quote?

9 A. Only by comparing.

10 Q. Okay.

11 A. It's, you know... I mean, overall, I think it's my
 12 understanding of what came out of those documents.

13 Q. All right. I am going to get to the recall itself.

14 Tell me, what is your understanding of why
 15 the product was recalled.

16 A. According to whom?

17 Q. According to the CPSC.

18 A. Well, the CPSC wrote to Walmart and said that they had
 19 reviewed information, I believe, about incidents.
 20 Now, I got to tell you that nobody has been able to
 produce that letter.

22 Q. Okay.

23 A. Okay? I only get this from Mr. Bussell's deposition.
 24 So I can't quote you specifically the CPSC's reasons
 25 other than, you know, at some point and based on some

1 A. Well, that's what my outline says. That would be
 2 highly unusual for the 15(b) Report to be made the
 3 same day the press release goes out.

4 Q. Why do you say that?

5 A. Because you just need more time than that to notify
 6 people. I've never actually seen, uh, you know,
 7 unless some, you know, the date's kind of crossed out
 8 on the full report from Cara Rose, but that's all the
 9 information I have.

10 Q. Do you have the actual recall notice from the CPSC as
 11 part of your material?

12 A. Yes.

13 Q. What was the basis or what was the reason that was
 14 listed in that recall notice as to why the product was
 15 recalled?

16 A. The safety interlock system on the recalled food
 17 processor can fail, allowing operation without the lid
 18 secured, which poses a laceration hazard, and there
 19 was also a fire hazard issue; in that there were 58
 20 incident reports, 24 reports of food processors
 21 operating without the lid in place, which resulted in
 22 21 injuries.

23 Q. Call you tell me how you define substantial product
 24 hazard. How are you defining that term?

25 A. Well, a substantial product hazard is a hazard that,

percent of the units to exhibit the defect. And then you have the September 23rd. Then on October 15th, Jorge Garcia writes to Demeter. Says, we have a problem.

Q. But my point is --

A. **There was no more testing after that.**

Q. After the September testing?

A. **No. I don't see any from September 23rd, '10 to February 10, 2011.**

Put my glasses back on. Make sure I'm not missing anything.

More injuries, more injuries. Then on September 10th, GE apparently exercises their contract right and stops sale at Walmart. You know, and on that same day, Jorge Garcia and Mr. Hamlett noted that they continued to have problems that it's doing things it's not supposed to do.

I don't see any other testing. If I'm missing something and you've got something, I'm happy to look at it.

Q. Are you aware of any other design changes to the product after September 10th, 2010?

A. **Not that I'm aware.**

Q. I'll tell you what, let's take a break for just a minute, and then we'll get into specifically your

another reason why it should have been stopped and recalled.

Q. And looking at number 4, Walmart and GE failed to apply the accepted principles of product safety management to adequately establish and observe a written corporate safety policy. You had that same opinion in the Landis case, did you not?

A. **Yes.**

Q. Okay. Is that typically an opinion you have against manufacturers and retailers?

A. **It depends if they do or they don't.**

Q. To the extent that you found that same opinion in the Landis case, was it predetermined in your mind that they were going to have failed in this case?

A. **Absolutely not.**

Q. And why do you say that?

A. **Because it's a question of whether they did or they didn't. I mean, there's some things in the quotes from Walmart... You know, I didn't say they had none. I said not adequate, you know, that would identify good traits that a manufacturer would follow. From a corporate safety policy point of view, I don't think they applied them in this case.**

Establish and observe. I haven't seen a methodology that Walmart gives to their associates,

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opinion, okay?

A. **Um-hum.**

(Recess taken at 10:58 a.m.)

(Back on the record at 11:07 a.m.)

BY MS. NOEL:

Q. I am on page 30 of your report, and I think we talked about number 1 sufficiently.

A. **Right.**

Q. Tell me on what basis you make your statements that Walmart and GE acted with a clear, conscious and reckless disregard for the safety of their customers.

A. **It's my opinion that they knew that people were going to get hurt. I'm not saying they intended people to get hurt, but they knew that the longer that product stayed on the market and the longer they sold it, the interlock was going to fail and result in substantial injuries and I think that for whatever, they continued to sell it based with that knowledge.**

Q. With respect to number 3, I think we've talked about that, because as I understand your opinions, it's basically your position that the food processor never should have been sold?

A. **That's right. And then once it was sold, from that point going forward, every time another test showing a defect or another injury occurred, that was just**

their managers, their buyers, somebody, that describes how to view or who's going to view the safety of the product. I mean, I think that -- I'm not saying they didn't look at it 'cause they clearly did -- but what they found was disturbing.

Q. Have you asked for any written corporate safety policy?

A. **No.**

Q. With respect to Walmart subsection (b), identify product hazards and evaluate severity, tell me what you mean by that.

A. **Well, the hazard is the failure of the interlock with the lid open and the blades continuing to spin and causing very severe injuries to people's hands, you know? I mean, maybe they knew that, you know, and I think you can make a case for the fact that they knew that, but the fact that they didn't act on it is a very serious problem.**

Q. With respect to subsection (c), perform a risk assessment to adequately integrate product hazards, the environment and foreseeable consumer use?

A. **I just didn't see where they did that at all. Again, I think they knew what the defect was, but if they had done that and written it down, I don't understand how they could have continued to sell the product.**

1 Q. And how about monitoring the safety performance of
 2 their product, why do you believe they failed in that
 3 regard?
A. Well, that, you know, they may have done adequately.
 4 They kept a list, you know, and that's a good thing,
 5 but again, monitoring and having the list is one
 6 thing, but then you have to go to (e), which is where
 7 they abjectly failed to take any kind of adequate
 8 corrective action.
 9
 10 Q. So you don't believe the initial rework of the spindle
 11 assembly was an effort to take corrective action to
 12 eliminate the potential?
 13 A. But they knew right away it didn't work. I mean,
 14 yeah, yeah, it was an attempt, but it was a failed
 15 attempt. They knew that right away, but they
 16 continued anyway.
 17 Q. Number 6, you have: Based on the knowledge of both GE
 18 and Walmart, the food processor created a substantial
 19 risk of injury before it was ever sold to the public,
 20 yet sales continued from 2009 to 2011, while efforts
 21 to identify the root cause and correct the defect
 22 failed.

23 And obviously I understand that's your
 24 opinion in this case, but would you agree with me that
 ~ there were efforts undertaken by both Walmart and GE

1 it, all on their own, that's all.
 2 BY MS. NOEL:
 3 Q. What does that have to do with this particular case?
 4 Did Walmart conduct a fast-track recall in this case?
 5 A. It's hard to tell 'cause I don't have the information,
 6 but what it wasn't was unprompted, but I'm just saying
 7 that in most cases the commission does not make a
 8 determination as to whether the product presents a
 9 substantial hazard and they go with the company's
 10 corrective action plan and do it fairly quickly.
 11 Q. Are you aware of any company that has placed recall
 12 notices in its weekly flyers?
 13 A. In its weekly flyers, no. In magazines and in other
 14 places, yes. In the weekly flyer, no, which is a real
 15 shame.
 16 Q. With respect to the examples that you gave regarding
 17 notification to customers, there's a difference
 18 between products that are sold to children and
 19 products that are utilized by adults, correct?
 20 A. I would say so.
 21 Q. Okay. And there's different notifications required by
 22 the CPSC as a result of that, correct?
 23 A. Generally, no.
 24 Q. Why do you say that?
 25 A. I don't understand what you mean.

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 1 to identify the root cause?
 2 A. **Unsuccessful ones, but yes, efforts.**
 3 Q. And I think you've testified earlier that you weren't
 4 aware of any design changes undertaken to try and
 5 eliminate those risks?
 6 A. **Post-September 23rd.**
 7 Q. Right. You're not aware of anything?
 8 A. **Correct.**
 9 Q. The second-to-the-last paragraph on page 32, can you
 10 tell me what you're trying to tell me there 'cause I
 11 just couldn't understand what you were saying.
 12 A. **Okay.**
 13 MR. CARR: Which one?
 14 MS. NOEL: Starting with 75 percent of all
 15 unprompted company initiated notifications to the
 16 commission.
 17 A. **Sure. Unprompted company initiated notification means**
 18 **where, without the commission writing to the company,**
 19 **the company under 15(b) takes the responsibility to**
 20 **report to the commission, okay?**

22 And then what I'm saying is that 75 percent
 23 of those notifications, of those Section 15(b)
 24 notifications, result in a fast-track, which is where
 25 the company comes to the commission and says, okay, I
 got this problem, here's what I'm going to do about

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 1 Q. Well, obviously to the extent that there's a recall
 2 involving, say, a child's toy, doesn't that have
 3 different reporting, recall reporting obligations
 4 typically by the CPSC?
 5 A. **I don't understand if you're making a distinction**
 6 **between the Hazardous Substances Act and the Consumer**
 7 **Product Safety Act, but the commission goes with the**
 8 **Product Safety Act, and the notification requirements**
 9 **here are the same.**
 10 Q. And along those lines, to the extent that Consumer
 11 Product Safety Commission is intimately involved with
 12 the recall process, they have to approve it, correct?
 13 A. **Yes.**
 14 Q. And the CPSC approves the corrective action plan?
 15 A. **Well, yes. The CPSC does not require notification**
 16 **beyond posters. I don't know where Walmart put the**
 17 **posters up in this case. When I did a recall for**
 18 **Restoration Hardware, we put a poster at every single**
 19 **register so that people got the word. Many retailers**
 20 **put them by the service desk, by the bathroom, where**
 21 **consumers never get a chance to see them. I don't**
 22 **know where Walmart put this poster up.**
 23 Q. Okay. Did you ask?
 24 A. **No.**
 25 Q. And the CPSC also mandates the length of time for

1 MR. CARR: Object to form.
 2 A. Yes. They didn't sue the commission to prevent them
 3 from doing it.
 BY MS. NOEL:
 Q. Well... And along those lines, Walmart worked with
 the commission to have the corrective action plan
 approved, correct?
 A. Well, sure.
 Q. Did you perform a risk assessment in this case with
 respect to the food processor?
 A. As part of my report, I think I assessed the risk.
 Q. Did you use a quantitative risk assessment or did you
 use a qualitative risk assessment?
 A. Absolutely qualitative.
 Q. Okay.
 A. There is no quantitative risk assessment as it relates
 to the evaluation of substantial hazards like this
 product.
 Q. And what did your qualitative risk assessment involve,
 just your review of all of these materials?
 A. Yes, as the product hazards, environment, foreseeable
 use. It's all part of my methodology.
 Q. I guess what I'm trying to determine is how you came
 up with your opinion that the risk was substantial
 versus reasonable or normal?

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A. Well, it can't be reasonable if there's a defect that
 chops people's fingers off in a food processor.
 That's not reasonable.
 Q. Well, I guess what I'm struggling with is the fact
 that you have a product that is inherently potentially
 dangerous because it has sharp edges, right?
 I mean, a food processor, a knife, you
 can't eliminate the risk.
 A. The blade is sharp and can cut.
 Q. Correct.
 A. Yes.
 Q. So what I'm trying to determine is what you looked at
 to assess that it was higher than reasonable or
 normal, even taking into consideration that it has
 sharp parts.
 A. Well, it's not the blades. It's the fact that
 unexpectedly, when your hand is in the bowl, under
 foreseeable conditions of use, the blade can start
 rotating and mangle or chop off your fingers. There's
 nothing reasonable about that. If you're going to
 tell me that it's okay to do that to 10 people if you
 sell X number of products or 20 people if you sell
 twice as many products, I think that's absurd and does
 not reflect 50 years of scholarship in the area of
 product safety. There's no level of unexpected finger

chopping that is acceptable.
 Q. And my question to you though is, to the extent --
 what do you believe was foreseeable, that people would
 stick their hand in the food processor with it plugged
 in?
 A. Sure.
 Q. Okay. You believe that's foreseeable?
 A. Absolutely.
 Q. Even though there were warnings in the food processor
 manual about not doing that?
 A. No. No, no, no, no. Not clear. There were serious
 deficits in the manual.
 Q. The language used in the manual, though, was what was
 required by UL, correct?
 A. No. I mean, there may have been... I don't know the
 answer to that, to tell you the truth.
 Q. Okay.
 A. But the manual certainly never warned people that that
 could happen and, I mean... But here's the problem,
 you would never -- Walmart would never warn people
 that the product would unexpectedly turn on and mangle
 their fingers. The reason for that, they're not going
 to be able to sell any.
 So if Walmart knew that and they don't want
 to tell people about it, how could it be reasonable

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when somebody's left without the use of their hand?
 Q. Is it your testimony that it was... Well, I think it
 has been your testimony that to the extent that these
 actuations of the interlock or the failures of the
 interlock, there was no discernible pattern to that,
 as I understand your testimony.
 A. Well, only that it appeared regardless of what
 configuration of the food processor was involved.
 Sometimes it happens, sometimes it didn't.
 Q. And I guess my question is, it's because of that,
 sometimes it happens, sometimes it didn't, that's not
 your criticism regarding the foreseeability, if that
 makes sense? You're looking at me like it doesn't
 make sense.
 Well, I'm trying to determine, when you say
 Walmart needed to evaluate the foreseeability if the
 interlock wouldn't fail on a predictable basis, is
 that the foreseeability you're talking about?
 A. Say it again. If it would fail?
 Q. Correct.
 A. Well, if it would fail on a predictable basis and that
 was foreseeable to Walmart, how could they distribute
 the product, knowing the clearly foreseeable
 consequences? And to me that goes for an intermittent
 basis also, because on an intermittent basis you just

1 Q. Didn't distribute it?
 2 A. No.
 3 Q. Didn't sell it?
 A. No.
 4 Q. Now, you made a comment about the rights that GE has
 5 in regard to the food processor.
 6 Do you know where those rights are set
 7 forth?
 8 A. I'm sure it would be in a licensing agreement.
 9 Q. And that's what I wanted to ask you about.
 10 You never reviewed the trademark license
 11 agreement between GE and Walmart, have you?
 12 A. No, it just came out of that memo on February 10th.
 13 Q. Okay, I understand.
 14 What you're saying is that you knew it
 15 existed because it was referenced in the e-mail that
 16 Mr. Irvine sent on February 10?
 17 A. That it existed and the critical point.
 18 Q. Okay. You've never reviewed the trademark license
 19 agreement itself, have you?
 20 A. No.
 21 Q. You couldn't tell us what the relationship is between
 22 GE and Walmart spelled out in that agreement, could
 23 you?
 24 A. In total?

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1 Q. Yes.
 2 A. No.
 3 Q. In part, can you tell us anything about it?
 4 A. Well, I just know from that memo that GE had the
 5 contractual right to shut it down if they felt it was
 6 an inappropriate product and the next day, in fact,
 7 sales were stopped.
 8 Q. And is that the sum total of what you know about the
 9 rights between the two parties in that agreement?
 10 A. Yes, sir.
 11 Q. Mr. Kitzes, you've not reviewed any GE corporate
 12 safety policies for licensed products in the formation
 13 of your opinion, have you?
 14 A. No.
 15 Q. Mr. Kitzes, if you would turn with me to pages 30 to
 16 32 of your report, and Ms. Noel has already gone
 17 through these. Here's what I want to do, I want to go
 18 through them and focus on what your allegation is
 19 specifically to GE in those.
 20 So the first one, and I'll just read it
 21 quickly for the record: Walmart and General Electric
 22 failed to adequately protect their customers from the
 23 substantial risk of injury associated with the
 24 intended and foreseeable use of the GE food processor.
 25 That's your conclusion, that Walmart and GE

1 breached a duty that they had in this case?
 2 A. Well, that's not my language, but yes.
 3 Q. And for GE, what's the factual basis that underpins
 4 that opinion?
 5 A. Well, everything that's in my report. I mean, we've
 6 gone through all of this.
 7 Q. And I just want to focus on GE. What's the factual
 8 basis for your conclusion that GE...
 9 A. They were apprised at the very beginning that there
 10 was a problem. They had the right and the
 11 responsibility, according to their memo, to exercise
 12 their contractual right and notify Walmart that they
 13 immediately stop production, sales, and sales of the
 14 product.
 15 Now, if you tell me that in between GE had
 16 their head in the sand and they weren't watching until
 17 the very end, that may be one thing, but I don't
 18 really believe that that's the case. You know, back
 19 in November 3rd of '09, they were still involved in
 20 the changed parts.
 21 Q. Okay.
 22 A. So I think that with the overarching capability to
 23 stop sale, that as the injuries mounted, they failed
 24 to do so.
 25 Q. And when you say the November 3rd, are you referring

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1 to just the entry you have on your timeline on page
 2 18, internal e-mail from GE?
 3 A. Yes.
 4 Q. Now, is there anything else that you're contending
 5 that GE did that supports opinion 1?
 6 A. Those three pieces of information is all I have about
 7 what GE did, so that's going to apply to all the
 8 opinions.
 9 Q. Okay.
 10 A. It revolves around the fact that they knew from the
 11 beginning there was a problem. They continued to be
 12 involved in the problem. And they had the right to
 13 interact and protect customers, which they finally did
 14 in February of 2011, but I think that that was too
 15 late.
 16 Q. And so for each of these opinions that you've got that
 17 you hold against GE, that's going to be the factual
 18 underpinning for them?
 19 A. Correct.
 20 Q. They knew from the beginning there was a problem, they
 21 continued to be involved with the problem, and that
 22 they had the right to stop the sale?
 23 A. Correct, and didn't, until February of '11.
 24 Q. And when you say GE knew from the beginning there was
 25 a problem, what is it that you were specifically